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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 368th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 28 April 1999, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.368/Add.1.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Consideration of the second periodic report of Mauritius (CAT/C/43/Add.1); HRI/CORE/1/Add.60/Rev.1)

1. At the invitation of the Chairman, Mr. Baichoo, Mr. Dabee, Ms. Dwarka-Canabady, Ms. Narain, Mr. Sawmy and Mr. Koodoruth (Mauritius) took places at the Committee table.

2. The CHAIRMAN invited the Mauritian delegation to introduce the second periodic report of Mauritius (CAT/C/43/Add.1).

3. Mr. BAICHOO (Mauritius) said that the Mauritian Government held the work of the Committee against Torture in high esteem and was convinced that its observations on the report would lead to further progress in the democratic tradition guaranteed by the Constitution.

4. Mr. DABEE (Mauritius), introducing the second periodic report of Mauritius, informed the Committee of new legislative, administrative and judicial measures designed to check police action which had been adopted in Mauritius since the submission of the report to the Committee in June 1998.

5. The Protection of Human Rights Act, passed in December 1998 and promulgated in February 1999, provided for the setting up of a National Human Rights Commission for the promotion and protection of human rights. The Commission would be chaired by a former judge and could consider complaints of violations or foreseeable violations by the act or omission of any person acting in the performance of a public function or by a member of the police force. The Act thus sought to address the risk of lack of impartiality or cover-up by the police force when its members were being investigated for brutality and malpractices. For the first time, the police force was subject to a statutory duty to keep an independent body informed of the action it had taken on a complaint.

6. The National Human Rights Commission could also carry out investigations, of its own motion, where it had reason to believe that a violation had occurred or was likely to occur, to review the safeguards provided under an enactment for the protection of human rights or the factors impeding the enjoyment of such rights, and to visit any police station or place of detention to study the living conditions and the treatment of inmates.

7. The Commission would initially attempt to resolve complaints by a conciliatory procedure. If that failed, it could, on completion of its inquiry, refer the matter to the appropriate authorities for prosecution or disciplinary action where a violation was disclosed, recommend the payment of damages, inform the complainant of any action taken and communicate its conclusions and recommendations in writing to the Minister responsible for human rights.

8. Although a precise definition of all forms of torture had not been incorporated in domestic legislation, the measures just described coupled with the civil, criminal and administrative legislation outlined in the report would go a long way towards preventing abuses by the police force.

9. In addition, a Presidential Commission had been established in 1997 to safeguard the independence and impartiality of the judiciary and to ensure that justice was dispensed humanely, promptly and efficiently and that the Mauritian people had ready access to the courts. The Administration of Justice (Miscellaneous Provisions) Act, which incorporated some of the Presidential Commission's recommendations, had been adopted by the National Assembly. It provided, inter alia, for the admissibility of a sound or audio-visual recording of evidence given by an accused party to an investigating officer. Such recordings were subject to stringent conditions to prevent any tampering with evidence. The measure would assist in addressing frequent allegations of the use of force, torture or other illicit means by law enforcement agencies to obtain confessions.

10. The Mental Health Care Act passed in 1998 had replaced the obsolete Lunacy Act. Doctors were required to inform patients or their next of kin of the rights and freedoms prescribed by the new Act, in particular the right to be treated with humanity and respect for human dignity and to appeal to a Mental Health Commission and ultimately to the courts if a patient was dissatisfied with his or her treatment or living conditions in a psychiatric hospital.

11. With regard to new judicial measures concerning the rights of accused parties, in June 1998 the Supreme Court had reviewed the conditions in which conferences between lawyers and their clients took place at the central prisons and suggested ways of improving them. It had concluded that the existing arrangements met the minimum standards required to ensure effective access to counsel. In that context, the Prime Minister had recently stated that unannounced visits would be conducted to monitor the treatment of inmates.

12. In February 1999, riots had broken out in Mauritius following the death in policy custody of a popular singer who had been arrested for possession of cannabis. The rioters had blamed the authorities. A judicial inquiry into the circumstances of the death had been instituted immediately afterwards and a Commission of Inquiry chaired by a judge would conduct investigations and make recommendations.

13. With regard to the future, the Prime Minister had announced the enactment of an equal opportunities act in the near future and the introduction of a bill to create a police authority which would meet four times a year in public. He had also spoken of the creation of a "central investigation of complaints against the police division" which would work under the supervision of the National Human Rights Commission.

14. The Mauritian Government's contribution of US$ 3,000 that year to the United Nations Voluntary Fund for Victims of Torture was a sign of its commitment to the Convention.

15. It had not yet been possible to finalize the reform of the extradition legislation because so many other projects demanded the Government's attention and because Mauritius lacked local expertise in the area of extradition. It was to be hoped that the United Nations Drug Control Programme (UNDCP) would expand its support to Mauritius to cover mutual assistance and extradition legislation.

16. The Mauritian Government had recently hosted, at Grande Baie, the Organization of African Unity (OAU) Ministerial Conference on Human Rights, which had been attended by the High Commissioner for Human Rights and the Secretary-General of OAU and had adopted the Mauritius Declaration.

17. Non-governmental organizations (NGOs) in Mauritius contributed actively to the discussion of human rights issues and their views were taken into account both formally and informally.

18. Mr. MAVROMMATIS (Country Rapporteur) said that the purpose of the Committee's consideration of reports and concluding observations was to engage in a constructive dialogue and not to prefer charges against the State party. The oral introduction had been very interesting and useful. The report was better than the previous one, but too brief, and provided information on groups of articles instead of dealing with them individually. It also failed to address questions that had been left unanswered when the previous report had been considered.

19. He welcomed the abolition of the death penalty and the establishment of the National Human Rights Commission. What steps would be taken to ensure that its decisions were enforced? He regretted the fact that the extradition laws had not been amended and drew attention to the need, in addition, to amend the legislation on foreigners in order to cover the three situations contemplated in article 3 (expulsion, refoulement, extradition).

20. He took note of the information on police training and asked the Mauritian delegation to report on the outcome of the Labrosse case mentioned in the previous report (CAT/C/24/Add.1).

21. Turning to the current report, he said he regretted the fact that some articles of the Convention had been somewhat hastily grouped together, for example articles 1, 2 and 4, which dealt with quite different subjects. Article 1 was particularly important. The incorporation of the definition of torture in States' domestic legislation brought out clearly the horrific nature of any act of torture. In the absence of such a definition, the act in question might be simply characterized as, for example, assault, which would make it less serious.

22. He noted that Mauritian legislation on extradition failed to cover the two other possibilities contemplated in article 3, namely expulsion and refoulement.

23. Article 5 of the Convention established the universal jurisdiction of States parties to the Convention in cases of torture. The provisions of Mauritian legislation fell short of the obligations incurred by States parties in that regard.

24. He noted that paragraph 17, which listed the rights of persons suspected of having committed a crime, failed to mention the right to consult a doctor. He wished to know at what point a suspect was entitled to consult a lawyer, given that acts of torture were often committed during the first few hours of police custody. In the same connection, it would be interesting to know how much time elapsed before a suspect was brought before a magistrate. Experience showed that the longer the delay, the more time there was for traces of torture to disappear. The "reasonable time" mentioned in paragraph 19 was too vague and needed to be made more precise. In the common-law tradition, the period in question was usually seven days.

25. Turning to the question of training for police officers, he asked whether they received special training in human rights, which was particularly important, and, if so, whether existing manuals specially designed for the purpose were used.

26. Mr. EL MASRY (Alternate Country Rapporteur), while generally welcoming the Protection of Human Rights Act and the establishment of the National Human Rights Commission, said he was particularly interested in articles 11 to 16 of the Convention on which his questions would focus.

27. He noted that the information that was supposed to concern article 11 actually related to article 2 of the Convention, since article 11 required States parties to keep all interrogation rules under systematic review. He would therefore appreciate information about existing review machinery.

28. According to paragraph 41 of the report, if it was established that the statements of an accused party had been obtained by the use of force, an inquiry would be instituted by a unit of the police force. But in such cases States were required under article 12 of the Convention to proceed to a prompt and impartial investigation. There was good reason to doubt the impartiality of a police inquiry into its own services.

29. He noted that, under section 64 of the District and Intermediate Courts (Criminal Jurisdiction) Act, the Department of Public Prosecutions (DPP) could require a magistrate to intervene when police officers were suspected of torture, whereas an ex officio investigation was required under article 12 of the Convention. In the event of the death of a detainee, a judicial inquiry should, of course, be conducted systematically.

30. Like the Country Rapporteur, he noted a lack of consistency between the number of charges of assault brought against the police and the number of convictions of police officers or of disciplinary measures taken against them.

31. Paragraph 47 of the report mentioned a voice message system. He asked for more information about how it operated and how useful it had proved.

32. In general, he found some of the information provided unduly brief. Paragraph 51, for instance, merely referred the reader for information on article 16 to other articles although they dealt with quite different questions. He would therefore welcome more detailed information on any measures taken, pursuant to article 16, to prohibit acts of cruel, inhuman or degrading treatment or punishment.

33. Mr. GONZÁLEZ POBLETE noted that the 1970 Extradition Act was to be amended in the light of the provisions of article 3 of the Convention. While that was to be welcomed, he pointed out that article 8 was equally important inasmuch as it specified the provisions to be included in extradition treaties and the offences covered by such treaties. Most laws and treaties concerning extradition were based on the principle of double criminality, i.e. that the offence must be a crime in both the requesting and requested State. Furthermore, in view of the absence of a specific crime of torture in Mauritian legislation, a situation could arise in which a request for extradition could not be acted upon. Hence the importance of taking article 8 into account.

34. Mr. SØRENSEN welcomed the adoption of the Mental Health Care Act. He regretted, however, that the information on article 10 of the Convention omitted to mention medical staff despite the particular importance of promoting awareness among doctors and all medical staff of problems relating to torture. On a somewhat different subject, he asked whether forensic surgeons and forensic medical laboratories were completely independent of the police. In many countries they were not under the control of the police but attached to universities.

35. He deplored the lack of information about article 14 of the Convention concerning the right of victims to obtain redress, noting that the issue had also been given perfunctory treatment in the initial report of Mauritius. He stressed the importance of arrangements for damages, compensation and rehabilitation and, in that connection, thanked Mauritius for its contribution to the United Nations Voluntary Fund for Victims of Torture. He also urged the Mauritian Government to observe 26 June, the date designated by the General Assembly as United Nations International Day in Support of Victims of Torture. Lastly, he asked whether victims could prosecute a specific individual - their torturer - or whether they could bring an action against the State.

36. Mr. CAMARA associated himself with all the questions asked by previous speakers and stressed that the Committee's observations were intended in all cases to promote a dialogue with States.

37. With reference to article 12 of the Convention, he noted, like the Alternate Country Rapporteur, that the DPP had discretionary powers to order an inquiry when there was a suspicion of torture. The principle of discretionary prosecution was incompatible with the binding character of the Convention, which required systematic investigation in such cases. He cautioned against procedural discrepancies that opened the door to abuses, as attested by the statistics given in paragraph 45 of the report, according to which none of the 34 alleged cases had led to a criminal prosecution. He asked for details on how the ombudsman was appointed, a procedure that could influence the degree of independence he enjoyed. He also regretted the amalgamation of several articles of the Convention and drew a distinction between article 11, which dealt with review of interrogation rules, and article 15, which stated the principle of the non-admissibility of statements obtained as a result of torture.

38. The CHAIRMAN asked whether, in the case of a statement obtained under torture and hence without evidential value in accordance with the Convention, the indirect evidence was admissible under domestic legislation. He also wished to know whether the remedy of habeas corpus was available under Mauritian legislation. With regard to the possibility of instituting private proceedings, it would be interesting to know how many such actions had been brought over the past two years, how many had succeeded and what procedure was applied. Lastly, he invited the delegation to encourage its Government to adopt legislation establishing the universal jurisdiction of Mauritius to hear cases of crimes against humanity and crimes of genocide.

39. The delegation of Mauritius withdrew.

The public part of the meeting rose at 11.20 a.m.